IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007/27TH SRAVANA 1929

WP(C).No. 700 of 2007(G)

PETITIONER:

SEBASTIAN JULEE,
KANDANEZHATHU PADEETTATHIL, ALUMKADAVU P.O.,
KARUNAGAPPALLY.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS:
----

1. **THE PUNJAB NATIONAL BANK,**
   REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,
   PNB HEAD OFFICE, BHIKAIJI CAMA PLACE,
   NEW DELHI-110 066.

2. **THE GENERAL MANAGER (PERSONNEL),**
   PUNJAB NATIONAL BANK, HEAD OFFICE,
   BHIKAIJI CAMA PLACE, NEW DELHI-66.

3. **THE REGIONAL MANAGER,**
   PUNJAB NATIONAL BANK, REGIONAL OFFICE,
   THIRUVANANTHAPURAM.

4. **THE SENIOR MANAGER (HRD),**
   PUNJAB NATIONAL BANK, REGIONAL OFFICE,
   THIRUVANANTHAPURAM.

BY ADV. SRI.P.K.SURESH KUMAR FOR R4
SMT.RENI RASHEED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON 18/08/2007 DELIVERED THE FOLLOWING:

WPC NO.700/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE DEATH CERTIFICATE ISSUED FROM KOLLAM CORPORATION.

EXT.P2: TRUE COPY OF APPLICATION DATED 10.6.2002 SUBMITTED BY THE PETITIONER.

EXT.P3: TRUE COPY OF THE LETTER DATED 5.6.2006 OF the 4TH RESPONDENT.

EXT.P4: TRUE COPY OF THE LETTER DATED 9.6.2006 OF THE PETITIONER.

EXT.P5: TRUE COPY OF THE LAWYER NOTICE DATED 11.7.2006.

//TRUE COPY//

ANTONY DOMINIC, J.

==========

W.P.(C) NO. 700 OF 2007

==========

Dated this the 18th day of August, 2007

J U D G M E N T

The petitioner is seeking to quash Ext.P3 and to direct respondents 1 and 2 to consider Ext.P2 application in terms of the Scheme for employment of dependants of employees dying in harness. Consequential reliefs are also sought for.

2. The petitioner's mother was a Part Time Sweeper, who died in service on 5/3/02. Claiming the benefit of the scheme for employment assistance to the dependants of employees who die in harness, which was in vogue in the Bank since 17/4/99, petitioner has submitted Ext.P2 application. It is stated that the application was processed and he was called upon to produce certain certificates. However, subsequently petitioner was informed that the scheme has been replaced by a new one which provided only for payment of exgratia in lieu of employment. By Ext.P3, he was requested to submit a proposal for consideration of his case for payment of exgratia. Thereupon he represented

that he had applied when the scheme for compassionate appointment was in force and therefore his claim should be considered under the said scheme. His representation did not evoke any response and it was followed by Ext.P5, a lawyer notice demanding employment, which was also not considered by the Bank. It is in the aforesaid circumstances, this writ petition has been filed.

3. On behalf of the respondent Bank, counter affidavit has been filed where they admit that the petitioner had applied for employment assistance. But then it is stated that the scheme had been replaced by a scheme for payment of exgratia in lieu of employment. It is contended that since the scheme for employment assistance is no longer available, petitioner cannot insist that he should be offered employment in the Bank. It is further contended that in the absence of any statutory or fundamental right in favour of the petitioner, he is not justified in seeking an order compelling the Bank to appoint him in its services.

4. Counsel for the petitioner submitted that though the Bank may have replaced the employment assistance scheme

later, as the application was made by the petitioner when the scheme was in force and hence his application is liable to be considered under the old scheme providing for employment assistance. In this connection, counsel places reliance on the judgment of the Supreme Court in the case of **Sushma Gosain v. Union of India and others (1989 (4) SCC 468)**. On the other hand, counsel for the respondent Bank submit that in the absence of a scheme in the Bank, the petitioner cannot insist that his application should be considered under a scheme which has since been withdrawn.

5. I have considered the submissions made by both sides. It is to be borne in mind that appointment on compassionate ground is not a source of recruitment, but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. The basic intention is that on the death of the employee concerned, his family is not deprived of the means of livelihood and the object is to enable the family to get over the sudden financial crisis. Therefore, a person can claim employment on compassionate grounds only if a scheme is prevailing in the establishment

concerned.

6. In so far as this case is concerned, as admitted by the petitioner himself, there is no such scheme and therefore petitioner has no fundamental or other legal right to insist that the appointment should be offered under the scheme, which has since been withdrawn.

7. The Supreme Court has in the case of **State Bank of India v. Somvir Singh (2007(4) SCC 778)** held as follows.

> There is no dispute whatsoever that the appellant Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

Therefore the availability of the scheme is a condition precedent for consideration of an application on compassionate grounds.

8. Now the question that remains is whether the

application of the petitioner ought to be considered in terms of the scheme which was since been withdrawn or not. Petitioner places reliance on the decision in **Sushma Gosain v. Union of India and Others (1989(4) SCC 468)** and in particular para 8 and 9 there after, which are extracted below for reference.

> (8). We heard counsel on both sides and gave our anxious consideration to the problem presented. It seems to us that the High Court has made the order in a mechanical way and if we may say so, the order lacks the sense of justice. Sushma Gosain made an application for appointment as Lower division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid government memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.
>
> (9). We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

9. Although petitioner is justified in placing reliance on this judgment, I notice that the judicial approach in so far as appointment on compassionate ground has undergone substantial change since then.

10. The fact whether on account of delay of the employer in considering the application under the scheme will deprive an applicant of his right has been considered by the Supreme Court in the case of **Sanjay Kumar v. State of Bihar and Others (2000 (7) SCC 192)**. In that case, making reference to a judgment of the Patna High court in Chandra Bhushan v. State of Bihar (1997(1) Patna Law Journal Report 626), it was contended before the Apex Court that an applicant's right cannot be defeated on the ground of delay caused by authorities, which was beyond the control of the applicant. Considering the contentions, Supreme Court held that there cannot be a reservation of a vacancy for a number of years unless there are specific provisions in the scheme itself. On this reasoning, the Supreme court expressed its inability to agree with the view expressed in Chandra Bhushan's case. Thus even if delay has occurred at the hands of the employer in considering the request for

compassionate appointment, such delay also can deprive an applicant of his claim under the scheme.

11. In this case though the petitioner has made his application in 2002, no orders were passed in the application and petitioner do not allege any malafides in the mater. In the meanwhile, the scheme then prevailing has also been withdrawn following the Government of India orders. If that be so, once a scheme is replaced, the claim of the petitioner can be considered only under the new scheme. In that view of the matter, I am not able to find a right in the petitioner to compell the authorities to consider his application under the scheme which has been withdrawn.

I do not find any merit in this writ petition and it is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp